



Liability of Parent Corporations
for the Operations of Their Subsidiaries
in the Minerals Industry^1

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Synopsis

Table with 2 columns: Section Number and Page Number. Includes sections like Introduction, Corporate Form and Limited Liability, Exceptions to the General Rule, and Corporate Separateness and Contemporary Regulation.

1 The authors note that they represent parties to some of the cases discussed in this paper, and caution that the views expressed herein are solely their own personal views and do not necessarily reflect the views of their clients.

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§ 2.01. Introduction.²

As the nature of the mining business has become more complex, so too has the business form to carry out different aspects of the enterprise. For various reasons, including the desire to limit or manage risk and the need for substantial capital investment, the mining industry today is heavily reliant on the corporate form of enterprise, and frequently uses multiple but related corporations to serve discrete functions and exploit new opportunities. Limited liability, one attribute of the corporate form of business, has been treated traditionally as the rule, and not the exception. However, the exceptions have grown through contemporary derivations of the equitable doctrine of piercing the corporate veil and the expansive application of remedial statutes.

Historically the corporate liability universe was the realm of tort and contract liabilities, governed, like the corporation itself, primarily by state law and subject to private litigation. The rise of the modern federal regulatory state has altered all that. Many, if not most, aspects of corporate conduct are controlled by federal (and derivative state) regulatory requirements which are result-oriented, focused more directly on controlling corporate conduct than on compensating injured third parties.

At the same time, federal regulators are less concerned than the states with protecting the rights of corporations organized under and nurtured by state law. Each federal agency tends to focus single-mindedly on achieving the particular policy objectives of its own regulatory scheme and preserving corporate viability is not one of them. Unfortunately for the minerals industry, it is among the most pervasively regulated and therefore the most subjected to the consequent disregard for the corporate form and encroachment upon principles of limited liability.

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This chapter examines those trends that expose parent corporations to potential liability for the activities of their subsidiaries, particularly as they arise under environmental and safety statutes applicable to the minerals industry. In particular, after a review of some general principles, we focus on the state of the law for parental liability under four such regulatory schemes: CERCLA, OSHA, MSHA, and SMCRA.

§ 2.02. The Corporate Form and Limited Liability.

[1] — The Corporate Form.

As a general matter, a corporation is a legal person distinct from those persons who compose its members or owners with its property vested in itself and its obligations separate from its owners. The doctrine of corporate separateness is a legal theory intended to serve the public policy to promote commerce and economic growth. Although the corporation is referred to as a legal fiction, it is often said that it is a fiction to be acted upon as if true.³

The distinct, or separate, corporate personality carries with it various attributes including the power to contract and to hold or convey property in its name; the power to sue or be sued in its name; centralization of management; ease in transferability of ownership; perpetual succession; and limited liability.⁴ The last attribute, limited liability, is cited as the principal reason for the corporation becoming the dominant business form in the United States.⁵ However, the attribute of limited liability may be secured under other business forms such as the Limited Liability Company which is essentially a hybrid that combines the advantage of limited liability of a corporation with the tax benefits available to a partnership.⁶ The corporation may issue various types of stock for purposes of allocating control, degree of risk and return to the owners.⁷ As a creature of law,

³ *E.g.*, *Puerto Rico v. Russell & Co.*, 288 U.S. 476, 480 (1933).

⁴ H. Henn & J. Alexander, *Law of Corporations* 148 (3d ed. 1983).

⁵ *See* Note, "Piercing the Corporate Law Veil: The Alter Ego Doctrine Under Federal Common Law," 95 *Harv. L. Rev.* 853, 854 (1982).

⁶ *See* Ribstein, "The Emergence of the Limited Liability Company," 51 *Bus. Law.* 1, 2-3 (1995).

⁷ *See, e.g.*, Model Business Corp. Act §§ 2.01-2.07 (1984).